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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of)
)
Amendment of Part 73 of the) RM-9260
Commission's Rules to Create)
a "Class A" Television Broadcast) MM Docket No. _____
Service)

To: The Commission.

COMMENTS OF
THE COMMUNITY BROADCASTING
COMPANY OF SAN DIEGO (CBCSD)

The Community Broadcasting Company of San Diego ("CBCSD"), licensee of low power television broadcast station K17DI, by its counsel, offers these comments in support of a Petition for Rulemaking, looking to the Creation of a "Class A" television broadcast service in Part 73 of the Rules and Regulations, 47 C.F.R. Part 73, for licensed and eligible low power television broadcast stations. The petition was filed by the Community Broadcasters Association ("CBA") on September 30, 1997, and amended on March 18, 1998. Comments were invited by Public Notice released on April 21, 1998.

CBCSD's facility is licensed on Channel 17, and serves National City and surrounding area in San Diego County, California, using the name, "KDI-TV." Over the past ten years, KBI has developed a vibrant originating broadcast service, addressed to the special needs and interest of the Spanish

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speaking population. CBCSD's facility narrowly escaped displacement during the DTV proceeding, and faces a continuing threat of its service being disrupted or terminated. Because of the need for Mexican concurrence in any future facilities changes, CBCSD may not be able to continue service, unless some legal priority such as "Class A" status becomes available.

1. Over the Past Ten Years, CBCSD has Developed a Strong Originating Broadcast Service, Addressed to the Underserved Spanish Language Population.

CBCSD received its original authorization through lottery in 1988. San Diego is ranked by Nielsen Media Research as the 26th largest TV market (DMA). The station faced major technical obstacles in construction, and unusually high costs overall. It became operational in 1996. A significant facilities upgrade was delayed by the requirement of Mexican concurrence, but was finally approved in September of 1997. Through this change, CBCSD was able to concentrate its signal in the heart of the Spanish language community, in National City. The new, stronger service was licensed on January 26 of this year. It is complemented by a full studio, and operates from the station's owned 10,000 sq. ft. building. The facilities include a sound stage, production and post production bays, master control, and audio and video studio suites. The station is minority controlled.

CBCSD now reaches a significant portion of the Hispanic community of San Diego County, estimated at 640,000 persons, a number approaching one fourth of the County's total population.

Through a joint venture with San Diego City College, the station jointly produces informational and educational fare. Local soccer games are being added. A local news program, a business news program, and children's programming all are in advanced planning stages. For each of these locally originated program services, there is no comparable or alternative local outlet, tailored to the same audience. With our upgraded technical facilities only a few months old, the station already has met with overwhelming favorable response throughout the area.

2. CBCSD's Facility Narrowly Escaped Displacement During the Digital Television Proceeding.

The Commission initially proposed the use of CBCSD's output channel, Channel 17, as the DTV paired channel for noncommercial station KPBS (TV), [DTV] Sixth Further Notice in MM Docket No. 87-268, 11 FCC Rcd 10968 (1996). CBCSD filed Comments imploring that this not be done.³ As the result of these, and related expressions of concern, the Commission finally decided, instead, to allot Channel 30 for the public broadcasting DTV facility, and to allot Channel 18 as the DTV channel for KUSI (TV), see [DTV] Sixth Report and Order, 12 FCC Rcd 14588, April 14, 1997. CBCSD is still investigating whether or not we need to seek displacement relief at some time in the future, given the expected adjacent channel relationship to Channel 18. It is clear, however, that

³ "Comments of the Community Broadcasting Corporation of San Diego (CBCSD), in Response to the Sixth Further Notice of Proposed Rule Making," November 22, 1996.

CBCSD' service will be able to continue in some form, even if there is a future loss of some effective coverage.

CBCSD takes this opportunity to thank the Commission and its staff for the careful attention that was given to this problem in the DTV rollout, and the significant and substantive relief we were granted in light of our comments. Nevertheless, we are constrained to say that, with an investment in excess of \$1,000,000 and with significant existing service to a seriously underserved audience, we do not want ever again to be placed in the position of possibly losing everything through a slight shift in the regulatory wind direction.

3. **Because of the Need for Mexican Concurrence, CBCSD may not be Able to Continue Service in the Event of Displacement, Unless Some Legal Priority Such As "Class A" Status Becomes Available.**

CBCSD's major change was approved in September, 1997, and a modified construction permit issued by the Commission, only after Mexican concurrence to the changes was granted. This requirement is triggered for all stations, such as CBCSD's, that are located close to the Mexican border. Mexican concurrence is a difficult and time consuming matter. On the U.S. side, it involves the participation of three operating Bureaus of the Commission. On the Mexican side, lines of authority become murky, status contacts are difficult, and substantial delays of months or even years are routine.

Other stations affected by new channel activations, or further changes to the TV Tables, generally are able to apply for

and obtain displacement relief, under established policies. For CBCSD, the danger is that displacement, even though treated as a minor change by the Commission, may trigger a Mexican coordination problem, either pre-authorization or post-authorization. If so, CBCSD may be unable to secure concurrence to any proposed channel change or other correction, and may be required in the future to cease operation altogether, for a period of months or years.

Our concern is heightened by the fact that Channel 17 was recently vacated for DTV purposes, and even more recently, that fact was reaffirmed on reconsideration (February 23, 1998). In a congested urban environment, with that channel visibly and freshly opened for some purposes, there is no assurance that the channel will not be sought by some other priority user in the future.

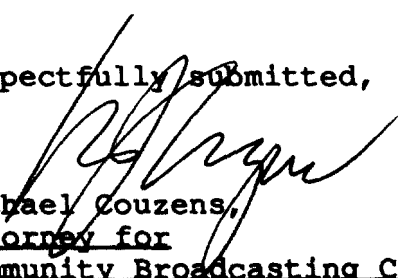
4. In the Long Term, CBCSD's Hopes for Expanding Service Crucially Depend Upon More Secured Use of its Channel.

Just as any business with long-term growth aspirations will not depend on a year-to-year or month-to-month lease for its building, so too CBCSD needs the assurance of channel stability, before it can take its community service to the next step. We are advised and believe that capital markets will remain closed to us, so long as the station is secondary. We foresee similar problems in negotiating cable carriage, from a position of secondary status. And we do not expect to be able to incur the risks of our own DTV build-out in the years to come, if our channel can be taken away without recourse.

For these reasons, CBCSD strongly endorses the concept of

primary status for a limited class of locally originating LPTV stations. We encourage the Commission to go forward with rule making. If it does so, we look forward to actively participating in the development of a public record, based on our experience.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Comments" was mailed at Oakland, California on May 21, 1998, with postage fully prepaid, to the following address:

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The foregoing is sworn to under the penalties for perjury provided in the laws of the United States.



Michael Couzens